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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2021

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THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Cr1. O.P. No.7330 of 2017
and Cr1.M.P.No.5299 of 2017

S.P.S.A. Nathan @ Amutheeswaranathan ..Petitioner

Vs.

Kalidasan @ Ramalingam ..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to quash the STR.No.58 of 2015, on the file of the Judicial Magistrate No.2, Karaikal.

For Petitioner : Mr.R.Kamaraj

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to quash the STR.No.58 of 2015, on the file of the Judicial Magistrate No.2, Karaikal.

2. The Crux of the allegation is that the private complaint has been filed against the accused who is a non-practicing Advocate in Karaikal and one of the members in Karaikal Congress Committee. The accused has been telling that he is the President of Puducherry State Hon'ble P.Chidambaram Followers Association; Puducherry State Elaya Nila Karthi P.Chidambaram Sports Club and Puducherry State Karuda Elaingar Nala Paasarai. The complainant did not know whether he had registered with those Associations. Moreover, the accused has also been telling that he is the Hereditary Sthaanigar Thirunallar Sree Saneeswara Bagawan Temple, Thirunallar. The respondent being a Government Teacher, associated with the Karaikal District Sozhiya Vellalar Nala Sangam and involved in money lending business. On 21.05.2015, the complainant has been served with a Memo dated 21.05.2015 by the Chief Educational Officer, Karaikal calling for an explanation based on the false and fictitious allegations made against him. Based on which, the complaint has been lodged.



3. Heard the learned counsel for the petitioner. Despite notice served on the respondent, there is no appearance on behalf of the respondent.

4. Learned counsel for the petitioner submitted that various allegations were made to the higher officials of the respondent, alleging that the respondent being a Government Teacher, he has been associated with the Karaikal District Sozhiya Vellalar Nala Sangam which is a community based association and had been provoking the caste feeling among the public and teaching faculties and he also involved in money lending business. A letter seeking enquiry report has been received from the Deputy Director (Elementary Education) Directorate of School Education, Puducherry stating that the respondent is being engaged in some financial transactions. Thereafter, the Chief Educational Officer has issued a Memo dated 21.05.2016 calling for explanation from the defacto complainant. Thereby, such conduct is not defamatory and is no longer harming the reputation of the respondent. He further submitted that the allegation is nothing but general in nature. The petitioner has made allegations in good faith in respect of the conduct of the defacto complainant in discharging the duties of the committee, upon imagination that, such complaint will not amount to any offence. As per Exception (5) of the Section 499 of I.P.C. Further, it is his contention that explanation was called for by the Chief Educational Officer was the main grievance of the defacto complainant/respondent, but the respondent has not even submitted any explanation. On the contrary, he questioned the authorities of CEO, Karaikal. Such being the position it cannot be said that such conduct has harmed the reputation of the respondent. Hence, it is nothing but false complaint and the same has to be quashed.

5. This Court has perused the entire materials available on record.

6. It is relevant to refer Fifth exception of Section 499 of I.P.C., which reads as follows:

Fifth Exception of Section 499 of I.P.C—
Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Though the 5th exception shows that if any opinion whatsoever expressed in good faith in respect of the conduct of the public service, despite the public functions fall



within the ambit of exception, the fact whether or not there was good faith cannot be decided at this stage, the same requires matter of evidence. Be that as it may, the very complaint itself indicate that the complaint has been made only on the basis of the explanation called for by the Chief Educational Officer, Karaikal on 27.05.2015.

7. It is relevant to note that in order to attract the offences for defamation, there must be a statement which would have been intended to harm the reputation of the other. Therefore, when allegations have been made to the higher officials and when explanation was called for by him, the defacto complainant has questioned the higher officials but not even provided any explanation which can be seen from various correspondence filed before this Court. Being a Subordinate officer to the Superior Officer, the defacto complainant has questioned the authorities of CEO stating that, without conducting the enquiry, straightaway, they have issued a Memo calling for explanation leveling false and baseless allegations. Therefore, when some allegations are made by the petitioner against the conduct of the person without any evidence or made with an intention to harm the reputation of the person and if the enquiry is conducted on the basis of the explanation submitted by the defacto complainant, and if the authorities find that such statement is false, it would amount to defamation and certainly, there is no escape for the petitioner herein. However, without submitting for any enquiry, making an attempt to stall the enquiry cannot be construed to be a defamation.

8. In such view of the matter, this Court is of the view that continuing the prosecution is nothing but futile exercise and abuse of process of law and even entire statement even taken on its face value, will not constitute any offence against the petitioner, since, he only addressed to the higher officials about the conduct of the respondent, which is not even enquired by the higher officials. In such view of the matter, continuation of prosecution is premature and the same is liable to be quashed.

9. Accordingly, the private complaint against the petitioner is quashed and this Criminal Original Petition is allowed. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar



To

The Judicial Magistrate No.2,
Karaikal.

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+1cc to Mr.R.Sunilkumar, Advocate SR. No.61253

+1cc to Mr.R.Kamaraj, Advocate SR. No.60922

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MG (CO)

PR (07/01/2022)